

### **REMARKS**

This responds to the Office Action mailed on October 18, 2005, and the references cited therewith.

Claims 1-3, 5-6, 13, 18, 24-25, and 27-29 are amended; as a result, claims 1-30 remain pending in this application.

#### **§101 Rejection of the Claims**

Claims 1-23 and 27 were rejected under 35 U.S.C. § 101 as being directed to non-statutory matter.

Claims 1 and 27 were rejected under 35 U.S.C. § 101 because the claimed invention is alleged to have been directed to non-statutory subject matter. Although Applicant disagrees with the Examiner's rationale for this rejection, independent claims 1 and 27 have been amended.

The Board of Patent Appeals has recently rejected and overruled the Patent Office's use of the "technical arts" test with respect to determining what is deemed statutory subject matter and what is not deemed statutory subject matter. The Examiner's attention is directed to Ex Parte Carl A. Lundgren, Appeal No. 2003-2088; Application No. 08/093,516; Paper No. 78. In this recent case (labeled as a precedential opinion by the Board), the "technical arts" test was overruled. The Board stated that once an Examiner determines that a claim is concrete and produces a tangible result, the analysis ends and the claim in question is patentable subject matter for purposes of § 101 analysis.

In Lundgren, the Board specifically reviewed a number of oft-cited cases, which are used by the Patent Office, and the Board found that there is no "technical arts" test that can be supported in the law. What is particularly relevant in the Lundgren decision is that the Board found that a purely manual process devoid of any physical medium or implementation was in fact statutory subject matter because it was concrete and produced a tangible result. The claims in Lundgren were in fact pure business method claims. The Board clearly stated that once it is resolved that a claim is concrete and produces a tangible result that the analysis ends and the claim is deemed to be statutory subject matter. The Board went further and stated there is no "technical arts" test or requirement. The decision in Lundgren is binding authority that the Patent Office is bound to follow.

Applicant has amended claims 1 and 27 to more clearly address the Examiner's concern. The remaining amended claims (2-3, 5-6, 13, 18, 24-25, and 28-29) are amended for grammatical reasons and not in response to the present rejection.

*Allowable Subject Matter*

Claims 24-26 and 28-30 are allowed.

Claims 1-23 and 27 would be allowable if rewritten or amended to overcome the rejections under 35 U.S. C. 101, as set forth in the Office Action.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 208-331-4537 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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Date 1/17/06

By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 17 day of January, 2006.

JONATHAN FERSTENSON



Name

Signature